

1 THE HONORABLE MARSHA J. PECHMAN
2 Noted on Motion Calendar
3 November 4, 2011
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 TRAVIS MICKELSON, DANIELLE H.
11 MICKELSON, and the marital community
thereof,

12 Plaintiffs,

13 v.

14 CHASE HOME FINANCE LLC, an unknown
entity, et al.,

15 Defendants.

16 No. 2:11-cv-01445-9

17 CHICAGO TITLE INSURANCE
18 COMPANY'S MOTION TO STRIKE AND
19 REPLY IN SUPPORT OF MOTION TO
20 DISMISS

I. REPLY

21 The Court should not consider Plaintiffs' Response to Chicago Title Insurance
22 Company's ("Chicago") Motion to Dismiss ("Response") as it was not timely served and
23 filed. Western District Local Civil Rule 7(d)(3) states: "Any opposition papers shall be filed
and served not later than the Monday before the noting date." Accordingly, Plaintiffs were
required to serve and file their Opposition by October, 31, 2011.

CHICAGO'S MOTION TO STRIKE AND
REPLY ON MOTION TO DISMISS – 1
NO. 2:11-CV-01445

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1 Plaintiffs filed their opposition two days late on November 2, 2011 (Dkt. #31).
 2 Plaintiffs did not obtain an extension from the Court nor did they obtain leave to file a late
 3 opposition.

4 The Court may decline to consider any paper that is not timely within the deadline set
 5 by order or local rule. Moreover, according to the Ninth Circuit, failure to follow a district
 6 court's local rules is a proper ground for dismissal. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.
 7 1995). Thus, this Court should deem Plaintiffs' failure to timely file an opposition as consent
 8 to granting of Chicago's motion.

9 Even if considered by the Court, Plaintiffs' Response does not defeat Chicago's
 10 Motion to Dismiss. Plaintiffs maintain that an original trustee owes a duty of good faith to a
 11 borrower after appointment of a successor trustee, yet they have provided no legal authority to
 12 support their theory. The cases cited to by Plaintiffs concerning the "scope of the duty owed"
 13 are irrelevant. Washington's Deed of Trust Act (the "Act"), RCW 61.24 *et seq.*, controls the
 14 issues here.

15 The Act, however, does not recognize any cause of action against a prior trustee who
 16 is not a party to foreclosure. Rather, RCW 61.24.010(4) states that "the trustee **or** successor
 17 trustee has a duty of good faith to the borrower." (Emphasis added). Here, Plaintiff is
 18 apparently alleging both Northwest Trustee Services **and** Chicago owe that duty. The statute
 19 says otherwise. Once the appointment is made, any duty of the former trustee is extinguished.

20 Plaintiff cites *Bain v. One West Bank*, F.S.B., No. C09-0149JCC, 2011 U.S. Dist.
 21 LEXIS 26318, *15-16 (U.S. Dist. W.D. Wash., Mar. 15, 2011) for the proposition that what
 22 duty, if any, a trustee owes to a borrower is unknown at this time in the State of Washington.
 23

1 Interestingly, the *Bain* court was deciding the issue of whether the **successor trustee** had a
2 duty of good faith to the borrower. There is no discussion of whether the original trustee
3 owed that duty. In fact, the original trustee in that case, Stewart Title Guarantee Co. was not
4 even a named party.

5 **III. CONCLUSION**

6 Plaintiffs' Response is untimely and should not be considered by this Court.
7 Regardless, Plaintiffs have no plausible claim for relief against Chicago. Accordingly,
8 Chicago's Motion to Dismiss should be granted.

9 DATED this 4th day of November, 2011.

10 FIDELITY NATIONAL LAW GROUP

11 /s/ Erin M. Stines
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CERTIFICATE OF SERVICE

I certify that on the date given below I electronically filed this document entitled CHICAGO TITLE INSURANCE COMPANY'S REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO DISMISS with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following persons:

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SIGNED this 4th day of November, at Seattle, Washington.

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/s/ Erin M. Stines

CHICAGO'S MOTION TO STRIKE AND
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